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Approved For Release 2005/07/12 : CIA-RDP85-00988R000200120006-2
OR OF CENTRAL INTELLIGENCE

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WASHINGTON, D.C. 20505

Legislative Counsel

OLC 79-0917/c

19 JUN 1979

Mr. James M. Frey
Assistant Director for
Legislative Reference
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Frey:

This is in response to your request for the views of the Central Intelligence Agency on H.R. 2, the "Sunset Act of 1979."

The Central Intelligence Agency supports the Administration position in favor of the sunset concept. Indeed, this Agency is one of the few entities in Government that is now subject to the requirements that would be applied generally under the terms of the proposed legislation. As you know, the Agency cooperates fully in the legislative oversight process carried out by the two Intelligence Oversight Committees, the Permanent Select Committee on Intelligence of the House and the Select Committee on Intelligence of the Senate. In addition, during the annual intelligence authorization process, Agency foreign intelligence programs are carefully scrutinized by a number of Congressional committees; no funds for intelligence activities to be conducted during any fiscal year are appropriated without having been specifically authorized.

By virtue of the work of the Intelligence Oversight Committees and the annual authorization review, therefore, this Agency is already in compliance with the spirit of the sunset concept. Accordingly, we pose no objection to the sunset concept embodied in H.R. 2.

We must, however, stress the fact that CIA programs are of necessity classified, extremely sensitive, and intimately concerned with intelligence sources and methods. We believe it is clearly the established policy of both the Administration and the Congress to limit the proliferation of sensitive information concerning intelligence activities, programs and budget. In that regard we are pleased to note that H.R. 2 contains in Section 802 a prohibition against public disclosure of classified information.

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We do, however, feel that further refinements, which do not in any way detract from the substance of the legislation, are necessary to take into account the unique needs of this Agency and the DCI's statutory responsibility to protect intelligence sources and methods from unauthorized disclosure.

The sunset concept consists basically of two components: an action-forcing mechanism called the "reauthorization review" which carries with it the ultimate threat of program termination on a periodic basis unless there is explicit renewal by law; and a mechanism called the "reexamination review" for the systematic review and evaluation of the past performance of selected programs. We have no problems with either concept; however, for the reasons stated above we believe it is essential that whenever such program reviews of intelligence activities are done outside the annual authorization process they be done solely by the two Intelligence Oversight Committees which have been given primary jurisdiction over intelligence matters by House Resolution 658 (95th Congress) and Senate Resolution 400 (94th Congress) respectively. Accordingly, we recommend that new Sections 803 and 804 be inserted as follows on p. 60 of H.R. 2 (present Sections 803 and 804 to be redesignated Sections 805 and 806 respectively):

"Sec. 803. Any reauthorization review or reexamination of intelligence activities required under this Act shall be performed solely by the Permanent Select Committee on Intelligence of the United States House of Representatives or the Select Committee on Intelligence of the United States Senate except as may be appropriate in the course of the annual intelligence authorization process."

"Sec. 804. As used in this Act, 'intelligence activities' means --

- (A) - any foreign intelligence activity;
- (B) - any counterintelligence activity;
- (C) - any counterterrorism activity; or
- (D) - any special activity."

Section 102 requires a reauthorization review and report to be submitted to the Senate or to the House of Representatives before any bill or resolution authorizing "new budget authority for a program for a fiscal year beginning after the next reauthorization date applicable to such program" may be considered by the Congress. Because of the sensitivity of the intelligence programs that would be subject to such reauthorization review reports, the Bill should specify

that classified reports relating to intelligence activities are to be provided only to the President pro tempore of the Senate and the Speaker of the House along with an unclassified summary. It is recommended, therefore, that a new subsection 102(d) be inserted on page 11 of H.R. 2:

"(d) Any reauthorization review report required under this Section which relates to intelligence activities and contains information requiring protection pursuant to statute or Executive Order shall be provided to the President pro tempore of the Senate and the Speaker of the House of Representatives along with an unclassified summary thereof; for purposes of security, the handling of the classified versions shall be governed by appropriate provisions of Senate Resolution 400, Ninety-fourth Congress or House Resolution 658, Ninety-fifth Congress."

Title II of the Bill calls for the Comptroller General and the Director of the Congressional Budget Office in cooperation with the Director of the Congressional Research Service to prepare a "program inventory" of all Federal programs which will be submitted to the Congress as a whole and to each committee thereof for review and revision, if appropriate. Title II also requires that the Comptroller General, after consultation and in cooperation with the Director of the Congressional Budget Office, issue a report to accompany the program inventory which groups programs into program areas and sets forth the purpose or purposes to be achieved by the program and other identifying information. In addition, paragraph 201(h)(1) requires the Director of the Congressional Budget Office to include in the program inventory, for each program or group of programs, the "amounts of new budget authority authorized and provided for the program for each of the preceding four fiscal years and, where applicable, the four succeeding fiscal years." Further declarations with regard to program budget amounts are required for the revised program inventory report called for under Section 204.

The compilation of a program inventory which included highly sensitive intelligence programs, and the disclosure of intelligence budget amounts in the reports that would be generated under Title II would be inimical to the fulfillment of the Central Intelligence Agency's mission. Intelligence

activities and the amounts authorized to be appropriated for them are scrupulously reviewed and the details thereof scrutinized on an annual basis in the intelligence authorization process. Because of the sensitivity and importance to the national security of these programs the Congress has determined that neither the specific amounts authorized nor the details surrounding the programs and activities themselves should be divulged publicly. Indeed, even the names of certain programs are highly classified. Accordingly, the intelligence budget and details concerning intelligence programs are and must remain secret. Any requirement that intelligence programs or the amounts authorized for them be made public or subject to scrutiny by the General Accounting Office, the Congressional Research Service, or the Congressional Budget Office would also be in direct and immediate conflict with the DCI's statutory responsibility for the protection of intelligence sources and methods. Accordingly, it is recommended that the following new Section 208, the substance of which is consistent with the intention and principle underlying paragraph 604(a)(1) addressed later in this letter, be inserted at page 24 of H.R. 2, exempting intelligence activities from the scope of Title II:

"Sec. 208. For purposes of Title II, the term "program" means an organized set of activities carried out pursuant to separate statutory authorization or for which Federal expenditures are specifically allocated by the Federal Government, and which can be evaluated in terms of relative effectiveness in pursuing a governmental goal, but shall not include intelligence activities."

Title III of the bill provides authority for each committee of Congress to selectively conduct, according to a reexamination plan developed by individual committees to be included in the committee's funding resolution and the report accompanying such resolution at the beginning of each Congress, a "comprehensive reexamination of selected programs or groups of programs over which [a particular committee] has jurisdiction." Each committee that undertakes a reexamination review is required to prepare a report, which subsequently is to be delivered to the Secretary of the Senate and the Clerk of the House, listing the committee's "findings, recommendations, and justifications with respect to the [reexamined] program." Subsection 302(d) contains a listing of eight items which must be covered in any such report. Any reexamination review and report of the type provided for

under Title III with regard to intelligence programs must of necessity concern itself with highly sensitive intelligence sources and methods. In order to guarantee this sensitive information the type of protection from unauthorized disclosure currently demanded by statute, it is recommended that the following new subsections be added to Section 304:

"(3) Any comprehensive reexamination of selected programs or groups of programs required by Section 301 relating to intelligence activities and any plans or reports required under Section 302 relating to intelligence activities shall be conducted or provided solely by the Permanent Select Committee on Intelligence of the United States House of Representatives or the Select Committee on Intelligence of the United States Senate, as appropriate, and shall be provided to the President pro tempore of the Senate and the Speaker of the House of Representatives along with an unclassified summary thereof; for purposes of security, the handling of the classified version shall be governed by appropriate provisions of Senate Resolution 400, Ninety-fourth Congress or House Resolution 658, Ninety-fifth Congress."

"(4) Reports required under Section 303 concerning intelligence activities and containing information requiring protection pursuant to statute or Executive Order shall be submitted to the Permanent Select Committee on Intelligence of the United States House of Representatives and the Select Committee on Intelligence of the United States Senate and, for purposes of security, shall be handled in accordance with appropriate provisions of Senate Resolution 400, Ninety-fourth Congress or House Resolution 658. An unclassified version of the report shall be provided to the Office of Management and Budget."

With regard to Title IV of the bill, which would establish a "Citizens' Commission on the Organization and Operation of Government," we support the Office of Management and Budget's intention to oppose inclusion of the Title in the bill. From the Agency's viewpoint, any such Commission would be duplicative of the Congressional Intelligence Oversight structure and thus counterproductive. The creation of such a Commission would serve also to increase rather than limit the proliferation of highly sensitive intelligence information.

Title V would apply the "sunset" concept to the regulatory functions of the Federal Government. Since this Agency is not a regulatory body, we defer comment on the Title to those more directly concerned.

Title VI, entitled "Government Accountability," would require the President at the beginning of every new Congress to submit a "Management Report" ranking Executive Branch programs according to their relative effectiveness. For purposes of Title VI paragraph 604(a)(1) defines "program" so as to exclude "national foreign intelligence activities." This phrase is undefined in the bill and as such is subject to varying interpretation. In order to make the phrase consistent with Administration positions developed with regard to the Intelligence Charter legislation, it is recommended that paragraph 604(a)(1) be amended to delete the phrase "national foreign" as unnecessary and potentially confusing.

Should you have any questions concerning this Agency's recommended amendments, please feel free to contact my office directly.

Sincerely,

RS/

Frederick P. Hitz
Legislative Counsel